02-06 MO Essay 1 Example 1

1. This involves a motion to vacate default judgment after 30 days (b/c default or any judgment is final after 30 days and trial court loses jurisdiction). A motion to vacate default judgment after 30 days must be filed within a reasonable time and within 1 year. See Clearly has done this b/c it has been 9 months since default and they filed immediately upon learning its bank accounts are liened due to default. In their motion, See Clearly must establish that they were diligent in answering the suit, establish a meritorious defense exists, and perhaps explain why they did not answer the original petition in time.

Here, See Clearly can establish diligence b/c they are motioning for vacating default as soon as they learned of the suit/default. See Clearly did not answer the original petition b/c service of process on them was bad. This bad service is a meritorious defense along with the fact that Glass King's Petition is without merit (given fact that Glass King knows each party it did business with in this hypo "had every legal right to do what each has done").

There is bad service of process b/c service on a corporation in Missouri requires personal service on an officer of the corporation, on its registered agent, or on an employee at the corporations usual office who is in charge of the office. Here, service is likely bad b/c the process server handed it to a person entering through a door marked "employee entrance" who was new employee arriving for the 1st day of work. The process server should inquire the person he is serving to see if they are in charge of the office, or are the registered agent or officer. The mail clerk does not meet this requirement, so service is bad and the trial court was without jurisdiction to enter default against See Clearly.

Thus, I think See Clearly will be successful on its Motion to Vacate.

2. Appeal of a trial court can only occur on judgment or orders that are final and dispose of all issues in the case (w/a few exceptions). I do not think a partial Summary Judgment is one of the exceptions and it is clearly not final as it does not dispose of all issues between the parties.

I think the manner in which the Order is written does effect the answer above. If the Order says that there is no reason to delay appeal or that this is an important question and the Trial Court basically says its okay to appeal, then Glass King could appeal a Summary Judgment on just Count I (leaving Count II undisposed).

3. Yes, Glass King's attorney did violate a RCP by filing and signing the petition (and violated ethical rules). When pleading fact allegations a party and attorney needs actual evidence to support the allegation or believe they are likely to obtain evidence upon further investigation (and they have to have already done some investigation). Further, by signing an attorney certifies he has read the pleading and believes it has basis. You can't sign something you know is false.

Here, Glass King knew the defendant did everything legally. Assuming Glass King told their attorney this when they told him/her "what it knows," then the attorney knew the allegations were false (and meant to just harass a party) and thus the attorney should not have signed and by doing so he broke the rules described above by signing false allegations w/no basis or support.

4. Since the rules have been violated you can file a Motion for Sanctions by first serving that attorney w/the Motion for Sanctions, waiting 30 days for him/her to correct, and if they don't, then file your Motion for Sanctions alleging what is described in my answer to #3 (but in practice citing and researching the actual rule violated).

02-06 MO Essay 1 Example 2

1. Default judgments are entered when a party fails to answer or appear. The moving party can request that a default judgment be set aside and must establish that the failure to answer or to appear was the result of excusable neglect, and that the party would have a meritorious defense to the action in the absence of the default.

Here, the facts indicate that See Clearly would have a meritorious def – namely, that Glass King filed the lawsuit both frivolously and maliciously. The issue is whether the seven month delay will be considered excusable neglect. Where, as here, process was defective and the party in default had no actual knowledge, the neglect is excusable.

Process on corporations can be accomplished thru serving officers of the corp (eg. Pres, CEO) or through serving someone in charge of an office. Here, the service was give to someone who was new, low-level employee, which clearly does not qualify. Although the fact the process server filed a return of service stating that service was executed upon a person in charge, creating prima facie evidence of proper service, this rebuttable presumption can be overcome by clear and convincing evidence to the contrary.

If See Clearly can establish improper service, the judgment will be set aside.

2. SJ motions will be granted for the movant if there are no genuine disputes of material facts and the movant is entitled to judgment as a matter of law. Facts and allegations must be supported w/evidence, including affidavits, discovery, or the opponent's pleadings (as admission). In a motion for SJ, judge will treat allegations of fact in light most favorable to moving party, and draw all reasonable inferences therefrom, but will disregard any legal conclusions.

Appeals may be made aggrieved parties (directly, negatively impact a substantial interest) from final orders. Final orders dispose of claims b/t parties, leaving nothing left to be decided. Typically, orders denying SJ are not appealable and orders granting are. Where, as here, the order is final w/regard to part of the lawsuit (an entire claim) appeal may be held by interlocutory or certified order, or for denial of an injunction.

If the appeal is related to the form language of the judge's order, this must be argued of particularity.

3. Filings submitted to the court must be signed and accompanied by a certificate, which verifies the submitting attorney warrants that the allegations contained therein are based on good law and facts supported by evidence. Factual allegations must be made in good faith after investigation reas. nec. under the circumstances, and warrant that they are based on ev. support, or a good faith belief that there will be ev. support after a reas. time for discovery. Legal claims must be made based on existing law or a non frivolous argument for the extension, modification, or change of existing law.

An attorney has filed a frivolous lawsuit when there is no reasonable argument that the facts allege state a valid COA against that particular defendant, or no good faith basis to believe the factual allegations are true.

Here, the facts clearly indicate that Glass King's attorney violated these rules. The facts indicate that GK informed the attorney that SC had done nothing wrong and its sole intent in filing the lawsuit was to harass and humiliate SC, or put SC out of business. The attorney nevertheless knowingly and deliberately filed the lawsuit. Attorney should be subject to sanctions.

4. To seek relief for See Clearly, you must file a Motion to Dismiss for failure to state a claim, alleging GK's bad actions w/specificity (note: state of mind may be alleged generally). You may file notice to GK that you intend to seek sanctions for filing a frivolous lawsuit, but pursuant to the Safe Harbor Rule, you must give GK 30 days to correct or dismiss the flawed filing(s). If GK has not corrected in 30 days, you may petition the court to dismiss the lawsuit and enter sanctions against GK's attorney. You may also seek an injunction from the court in equitable relief to stay or suspend frivolous or maliciously instituted proceedings.

02-06 MO Essay 1 Example 3

1. The motion must establish (1) a meritorious defense and (2) mistake by my client plus lack of recklessness or intentional delay.

The motion will likely be successful. The facts indicate that the claims are frivolous. Plaintiff is aware that my client had every legal right to hire the employees. Therefore my client has a meritorious defense.

There is also no indication of reckless or intentional delay by my client. Given that my client was arguably not properly served, mistake should be readily establishable. The court, therefore, should grant the motion.

2. Glass King cannot appeal the order unless it is a partial final order certified by the court. Generally, a party may appeal a judgment by the trial court only if it is final. A final judgment is one that disposed of all claims among the parties. Here, Count II remains, so the orders did not dispose of all claims and is, therefore, not final.

However, a court may certify an order that disposes of only some but not all claims where the court finds no just reason for delay. If a partial order is certified as final, it may be appealed immediately.

- 3. Yes, by signing the petition Attorney certified that all factual allegations are supported by evidence or likely will be upon reasonable investigation or discovery. The facts indicate that my client did nothing wrong and both plaintiff and his attorney knew that fact. By filing the petition alleging my client acted tortiously when he or she knew that my client in fact had not acted as such, Attorney violated the rules of civil procedure.
- 4. I must file a motion for sanctions and serve it on Glass King and Attorney. If they do not correct their pleadings within 30 days, I may file the motion with the court.

02-06 MO Essay 2 Example 1

1. Production should sue for specific performance under the contract. Specific performance is an obtainable remedy where legal damages would be inadequate, enforcement of performance by the court would be feasible, and the balance of harms favors the party requesting specific performance. Production's claim for specific performance will fail.

Here, legal damages might be inadequate because the goods involved are a "special type" of oil, and Production will go out of business if it is not supplied for two weeks. Production can argue that the oil is a "unique" good that cannot be adequately replaced by money damages. However, despite the tight market for the oil, the fact remains that the oil is available on the spot market, and is therefore not a unique good.

In addition, enforcement of specific performance by the court would entail ongoing enforcement of deliveries under a two-year contract. While courts are willing to enforce negative injunctions and one-time transfers of title, they are less willing to enforce ongoing affirmative performance.

Finally, the balance of harms does not weigh strongly enough in Production's favor. Although Production faces going out of business without the oil, it is just as likely that Disposable will go out of business if it is forced to sell the oil at a huge loss for two years.

For these reasons, specific performance is not appropriate in this case.

Production can also claim consequential damages. Consequential damages are damage that flow from a breach that would not ordinarily be foreseeable to the breaching party. They can only be recovered if the breaching party had actual notice of their potential occurrence at the time of contracting. They must also be set forth in the pleading to give the breaching party notice that they are at issue. Consequential damages are available in this case because the contract expressly set forth that they would occur upon breach. Namely, that Production would lose customers and go out of business in the event of breach. Production can recover if it pleads this element of damages.

2. Disposable should assert a claim of rescission based on mutual mistake. Under this theory, Disposable must show that the contract was mistaken with respect to a material element, that neither party was aware of the mistake, and that enforcement of the contract would therefore be inequitable. The mistake must have existed at the time of contracting.

In this case, a grant of rescission would be proper. The mistake occurred in the pricing term, a material element of the contract. Because both parties relied on the same industry expert, both parties were reasonably unaware of the mistake. In addition, because both parties used the same expert, it would be inequitable to force Disposable to bear the entire weight of the expert's mistake. Therefore, rescission is a proper remedy.

- 3. Rescission is a remedy that seeks to put both parties in the position they would have been in if the contract had not been made. Production has already paid a \$10 million service fee and \$5 million more to Disposable, while Disposable has paid \$12 million to supply oil to Production. If the contract had not occurred, Production would have had to pay \$12 million on the spot market for the oil. Therefore, to put the parties back in their original positions, Disposable should return \$3 million to Production. In this way, Production has paid the \$12 million spot market price and Disposable has made no profit or loss.
- 4. The consultant should assert a claim for quantum meruit. Under this claim, the consultant can obtain

the value of his services rendered if he shows that Disposable accepted the benefit of his work and that the value of the services is reasonably ascertainable.

The consultant can recover under quantum meruit in this case because Disposable relied on his report in developing a successful marketing program, thereby accepting the benefit of his services, and there is a standard hourly rate charged by consultants in the industry, thereby making the value of the services readily ascertainable.

02-06 MO Essay 2 Example 2

Question 2

1. Production must plead and prove he is entitled to specific performance of the contract.

To be granted specific performance, a party must show there was a valid contract, he is entitled to enforce the contract, the nature of the contract is unique, money damages are insufficient, specific performance is feasible, and the balance of harms favor the moving party.

In this case, there was a written contract which was valid. Even though it was a supply contract, the terms were sufficiently clear. Both parties relied on an expert. This is a unique contract, and Production made it very clear that it had unique needs and would be harmed if the contract was breached. Money damages are insufficient here because Production made clear that the company would not survive if the oil were cut off. Because Production could go out of business, the balance of harms favor Production, even though Disposable will lose a lot of money.

For the above reasons, Production is entitled to specific performance.

- 2. Disposable must assert it is entitled to rescission of the contract. Rescission is an equitable remedy that voids the contract. To plead and prove it is entitled to rescission, Disposable must show there was a mutual mistake and that this mutual mistake was so significant as to justify voiding the contract. In this case, Disposable would probably also have to show that it did not assume the risk of faulty research. Disposable must prove that the mistake of fact was material and that it was in fact mutual.
- 3. Disposable owes Production \$3 million if rescission granted. If rescission is granted, the contract is considered void. Because both parties have already fulfilled obligations under the party, the court must determine what to do. Because the contract has been voided the parties should only pay the fair value of what has already been consumed. Production has paid \$15 million (\$10 million service fee plus one month at \$5 million.) Disposable has provided oil worth \$12 million, so it owes Production \$3 million.
- 4. Consultant can seek quantum meruit. Quantum meruit is a reasonable amount of compensation based on the services provided. He must prove that he provided a service to Production, that Production used the service, and it would be inequitable and unfair enrichment to allow Production to benefit from this service without paying for it. He will be successful because Production asked for an analysis, and actually used the analysis without paying. Production is clearly being unfairly enriched.

02-06 MO Essay 2 Example 3

1. Production will not be able to force Disposable to provide the oil to Production because the goods are not unique enough to be unavailable elsewhere.

Under Missouri law, Production will need to state a claim for specific performance under the contract with Disposable. Specific performance is an equitable remedy and Production will have to plead the following elements: 1) there is a valid contract, 2) legal remedies would be inadequate 3) specific performance is feasible. For specific performance of goods, the goods must be unique or in such scarce supply that they are unavailable elsewhere.

Here, there appears to be a legal contract and the court would be able to order Disposable to deliver the goods so performance is feasible. However, it seems that legal damages would be sufficient to compensate Production. The special type of oil that Production needs is still available for purchase on the spot market. The price has just increased substantially. Thus Production could purchase the oil on the spot market and sue Disposable for the difference in price.

Therefore, Product will not be able to get specific performance under the contract.

2). Disposable needs to assert a counterclaim for rescission since there is a mutual mistake of fact that goes to the substance of the contract.

Under Missouri law, one of the grounds for rescission of a contract is a mutual mistake of fact that forms the basis of the contract.

Here both parties mistakenly relied on an expert in the field to determine the value to put on the contract. Since the experts data goes the very heart of the value of the contract, Disposable should be able to plead and prove a mutual mistake of fact that was the basis of the contract.

3). If rescission is granted, both parties will be put back in their pre-contract position as near as possible, so Disposable will owe Production \$3 million.

Under Missouri law, rescission avoids the contract and both parties need to be put back in their precontract positions.

Here, assuming that Production is unable to return the oil to Disposable, an adjustment of money will have to be made. Production received a quantity of oil that was worth \$12 million from Disposable. Disposable received the \$5 million fixed price for the oil plus the \$10 million service from Production, for a total of \$15 million. Disposable will have to return the excess \$3 million to Production if rescission is granted.

4). Consultant can also make out a claim for Quantum Meruit for the reasonable value of Consultants Services.

Under Missouri law, a claim in Quantum Meruit can be claimed if the defendant accepted a benefit from the plaintiff. The plaintiff can then be awarded the reasonable value of the services if the plaintiff did not intend the benefit to be gratuitous.

Here, Disposable asked for the analysis, consultant provided the analysis with expectation of being paid for it, and Disposable accepted the analysis and used it in developing its marketing program. Therefore,

Consultant can receive the reasonable value of its services in preparing the analysis for Disposable.	

02-06 MO Essay 3 Example 1

- 1. The type of hearing that should be used is a contested case hearing. In Missouri, a contested case is one in which an agency takes testimony from the parties on the record, before deciding the case on the merits. The proceeding is very much like a civil bench trial. Because the Missouri Water Commission would seek to determine whether ACME Water is charging two different rates to Small Customer and Big Deal, it is important that Small Customer and ACME both have an opportunity to present evidence of their own. A non contested case does not afford the opportunity for a company or person in ACME Water's position to present evidence. ACME would be entitled to show why they charge different rates to different customers. The contested case would be the appropriate forum to use in this case to do so.
- 2. Big Deal could intervene in the action. A party can intervene in an Administrative hearing in Missouri if they are in privity with a current party to the case, and there is a likelihood of harm to them if they are not allowed to do so. Under these facts, Big Deal will want to show why they are charged only 2 cents per gallon of water. The harm to Big Deal could come if it is found that the amount ACME charges to Big Deal is insufficient, and therefore Big Deal must be charged more. Big Deal is in privity with ACME as one of its customers. Therefore, Big Deal should be allowed to intervene in the action.
- 3. ACME must seek review of the order by the Commission in Circuit Court, <u>if</u> they have exhausted all administrative remedies. The rule in Missouri is that a party must exhaust all Administrative procedures and remedies prior to appealing to Circuit Court. If appealed to Circuit Court, the scopes of review are as follows:
 - 1. The question of whether the Commission has authority to resolve the dispute is a jurisdiction question. In Missouri agency jurisdiction is reviewed De Novo with substituted judgment by the Circuit Court.
 - 2. This is a Merits Review (factual findings issue). Merits Review issues, and the facts raised during the hearing are reviewed on the basis of whether there was substantial evidence on the record.
 - 3. The ultimate findings of an Administrative Board is reviewed on an Abuse of Discretion standard. The Commission is in the best place to decide the issue.

02-06 MO Essay 3 Example 2

1. A contested case involves an agency's disposition of a specified individual's private rights under agency jurisdiction. The individual must have a specific interest at issue that is impacted by the agency decision. A contested case is a quasi-adjudicative process and therefore invokes constitutional due process rights, requiring a relatively formal adjudicative hearing. The procedural requirements include the right to present evidence, the right to have knowledge of the opposing party's evidence, the right to test & rebut the opposing party's evidence, and the right to have the case determined solely on the record adduced at the hearing.

In essence, the rights involved and the hearing procedure is substantially similar to that of civil proceedings in court – there are virtually the same discovery devices, the contesting party may be represented by an attorney, may present evidence, call witnesses, has the right to fully cross-examine witnesses, and in general all evidentiary rules apply – including hearsay restrictions and exceptions. However, due to slightly less formality, otherwise inadmissable evidence that is presented and introduced w/o objection by the opposing party will stand and not constitute prejudicial error.

Because Small Customer's specific rights to being fairly charged by ACME Water, pursuant to the Water Commissioner's findings are at issue, Small Customer is entitled to a hearing with the aforementioned proc. due proc. rights.

2. Procedural rules in admin. contested cases are fundamentally similar to those in civil proceedings in courts. 3rd parties may intervene in contested cases if they have an interest at stake in the proceeding; which may be adversely impacted by the proceeding or could be subject to inconsistent rulings if not involved. Intervention as of right occurs when the 3rd parties interest in the outcome is not adequately represented by any party currently a party to the proceeding. Permissive intervention occurs when the 3rd parties' claims has a common question of law or facts with the pending proceedings.

Here, Big Deal can probably intervene as of right, since the determination of the validity of disparate water pricing decisions could definitely impact Big Deal's pricing for its large daily supply of water. The other parties are Small Customer – in essence an adversary to Big Deal who objects to the water distributor status quo, and ACME Water itself, the pricing authority. It is unlikely either will adequately represent/protect Big Deal's interest the outcome, and Big Deal should be permitted intervene.

3. ACME would seek review in a Missouri Circuit Court where the Water Commission is located (prob. Cole County). In a contested case, ACME can seek procedural or merits review. Since procedural review involves questions of law, the Circuit Court will substitute its own judgment (de novo) giving the agency little or no deference. Merits review is substantive, involving questions of fact, and the Circuit Court will typically defer to the agency determination so long as the decision is supported by substantial evidence and reasonable in light of whole record. If the issue is a mixed question of law and fact, the court will try to separate it and legal and factual elements and apply review as discussed above.

For procedural review in contested cases, courts typically look to ensure that, in addition to the elements discussed in sub-part #1(infra), sufficient formalities have been observed, specifically that there was adequate separation of functions, no ex parte communications, no pre-judgment of factual issues (cf. pre-established policy views), and that the requisite standard for determinations was preponderance of the evidence.

Here, the Commission's first finding – of legal auth. – is a <u>legal</u> determination that the court will review de novo. Courts are the final expositors of legislative interpretation.

The Commission's 2nd determination is a factual finding subject to merits review and the substantial evidence test. The 3rd determination is probably a mixed finding of law and fact, which the court will apportion if possible and apply the review as discussed above.

02-06 MO Essay 3 Example 3

#1:

There are two types of hearings in MAPA -- informal hearings and contested hearings. Here there are material questions of <u>adjudicated facts</u> (issues relating specifically to one person, not an across the board determination), that effects one party's <u>protectable property and/or liberty interests</u>. Accordingly, a contested hearing (or trial-type hearing, as defined by the APA), is necessary for due process protections.

The MWC may argue that there are no protectable property and/or liberty interests at stake, as no party has a right to reasonably priced water. Here, however, the price discrepency and discrimination effects the ability of SC to conduct business effectively. It also discriminates against them individually. There are material adjudicated facts against the MWC as to SC individually. Because it is party against party, SC and MWC are entitled to a trial-type hearing.

A <u>contested hearing</u> requires reasonable notice to the effected parties, including a reasonable time, date, and information relating to the facts and law asserted. At a contested hearing, a hearing officer presides over the action. SC will be able to subpoena reasonable witnesses and information, is able to cross-examine witnesses (outside the scope of direct testimony), admit evidence, etc. Though it has more relaxed procedures than a trial, many of the same rules apply.

NOTE: An informal hearing requires only notice (in the daily register), opportunity to respond in writing, and a reason for the rule or promulgation.

#2:

Usually, whether a party can intervene is within the <u>discretion of the agency</u>. However, if the non-party has <u>protectable property and/or liberty rights</u> that are not <u>adequately represented</u> at a hearing, the party may intervene as a matter of right.

BD can/should be allowed to intervene. BD is obviously not adequately represented at the hearing, as SC is alleging that the MWC is illegally discriminating against it, and though the party configuration is SC vs. MWC, they are essentially litigating the propriety of the \$.02 rate MWC gives to BD. Arguably, however, BD does not have a protectable *property* or *liberty* interest in the price of \$.02 for water. If there was a contract with the MWC, which does not appear from the facts, BD would have more of an argument for intervention. Though its rights are not adequately represented, BD will likely not be able to intervene because it does not have a property or liberty interest.

The agency may, however, use its discretion to allow BD to intervene.

#3:

In order to satisfy the doctrine of separation of powers, a party is entitled to review of an administrative agency's judicial decision unless there is clear evidence that the legislature/judicial body put sole authority within the agency (even if the leigslature/judical body disallows review, there may be due process questions). Here, it is apparent from the statutory theme that the MWC is delegated authority to regulate the prices for its water. Because it does not appear from the agency that the legislature/judicial body has foreclosed review, Acme may seek review according to the proper procedures.

Where: Acme must exhaust all of its administrative remedies unless it appears that further administrative action is 1) futile, 2) not contemplated by the legislature, 3) the agency is clearly without jurisdiction, etc. Because it appears there is proper jurisdiction and a proper order, Acme must continue administrative review as mandated by the MAPA. For example, if the Missouri Water Commission requires further review by agency heads, Acme must satisfy that process. However, because "water" is not normally appealable within the agency itself (does not deal with licenses, worker's compensation, etc), the determination is appealable in the circuit court.

Standard of Review: The MWC's determination that it has the legal authority to resolve these

type of disputes is a legal determination. Legal determinations by an administrative agency is subject to <u>de novo</u> review, thus the court need not give any discretion to the MWC's findings of law. The MWC's determination that Acme is charging two different rates for water is a question of fact. The standard of review for a question of fact is whether there is <u>substantial evidence on the record</u>. Assuming there is a reasonable basis for the court's determination as shown by the evidence (in Missouri, only the evidence introduced at trial is admissible without notice), the court will uphold the administrative agency's determination. The determination of whether Acme unreasonably discriminated, there is both a question of law and fact. The court will determine whether there was substantial evidence on the record, but because the MWC used its <u>expertise in deciding the issue</u> of reasonableness of price-fixing of water, the court will give more deference to the determination than a de novo review.

02-06 MO Essay 4 Example 1

- 1. The requirements for a valid and enforceable prenuptial agreement is that it must i) give a full and fair disclosure of the financial situation of both parties, ii) give notice of the rights of the respective parties in the event of divorce or death of a party, iii) give consideration for any rights a party waives with regard to support and maintenance, and iv) the circumstances under which it is signed must be fair to both parties.
- 2. This agreement is not valid and enforceable. It fulfills few of the requirements for a valid prenuptial agreement, stated in the last question. First, it does not disclose the respective financial positions of the parties. Nor does it give notice of the rights of each party upon death, although it does disclose a means for determining the amount of money to which Pat will be entitled at divorce, in satisfaction of any property division that would normally occur. Finally, the manner in which the agreement was signed was arguably unfair. Pat had no legal counsel, no discussion or explanation of the terms of the document before him/her, and barely any notice as to what he/she was signing, save for the title of the document. He/she was taken to the attorney's office under the pretense that Terry was simply tidying up some business before they got married, and was not told that he/she would be signing a prenuptial agreement. All in all, none of the facts indicate that any attempt was made to apprise Pat of any information with regard to the agreement, other than having it handed it to him/her. Therefore, the agreement is not valid.
- 3. The court should consider the usual factors it considers when awarding maintenance, and ignore the prenuptial agreement. Maintenance is generally calculated to make the spouse as self-sufficient as possible and not suddenly remove all the financial benefits to which he/she has become accustomed. The factors considered include things like the length of the marriage, the job skills and overall employability of the spouse to be maintained, the financial means the person is accustomed to having at his/her disposal, and so forth. There is no reason to consult the prenuptial agreement in this case, as it is invalid, but even if it were valid, it is silent as to the issue of maintenance, so the court is free to award maintenance according to its usual guidelines. Therefore, the court should consider the length of the marriage, which was only 4 years, and

arguably not long enough for Pat to become accustomed to a life of means. Moreover, it is arguable that his/her job skills have not withered in such a short time, and he/she is probably able to get a decent job.

02-06 MO Essay 4 Example 2

1. A valid prenuptial agreement requires:

Written agreement, full and fair disclosure of the rights and property the spouse will be waiving. Property is valued @ execution, and maintenance or support is decided @ enforcement. It must be signed by both parties and must not be unconscionable. The waiver must be knowing and voluntary.

- 2. This agreement is not valid or enforceable b/c it is unconscionable. A valid prenup, requires full and fair disclosure of the marital property. Terry had substantial money and assets and never disclosed anything to Pat. Additionally, the document itself was not described or explained to Pat, she was not offered any time to read or comprehend what she was signing. Despite the fact the document was titled "Prenuptial Agreement between Terry & Pat," Pat may not have even known what she was signing. Therefore, there was no full and fair disclosure or knowing waiver. This prenup, is unenforceable.
- 3. Maintenance is determined by the standard of whether a spouse is unable to meet reasonable needs. Factors that are considered are the fault of the parties, the employability of the party seeking maintenance, the standard of living they were accustomed to, the duration of the marriage and the financial resources of each party.

The facts do not indicate a reason for dissolution so fault cannot be determined. The court will look at Pat's ability to gain employment (must be able to support herself). Pat will have an ongoing duty to seek and/or maintain gainful employment. The court will consider that their marriage was only for four years, but most important in this case will be the financial resources of each party. Before the marriage Pat had no significant monetary or property assets. The court would consider the prenuptial agreement and the clause providing Pat with \$100,000 for every year of marriage. Pat would have \$400,000 so her maintenance would be minimal if any because Missouri prefers to get away from such awards.

However, since the prenup. is unconscionable and unlikely to be enforced the court may disregard it. Pat may receive permanent maintenance — which has no end and may be modified @ any time or durational maintenance w/has a specific end and may only be modified during that time.

02-06 MO Essay 4 Example 3

#1:

A valid and enforceable prenuptial agreement requires 1) a fair and adequate disclosure of both spouses' assets and liabilities; 2) fair consideration; 3) fair; and 4) each party is adequately informed/represented of their rights.

#2:

This agreement is not valid and enforceable.

First, there was no disclosure of each party's assets and liabilities. They only knew each other for a few weeks before they decided to get married, so it is very likely that Pat had no idea what she was giving up or the extent of Terry's assets and liabilities. Though this may be rebutted by Terry later showing that Pat did indeed have full disclosure, without that fact, the prenuptuial is unenforceable.

Second, Pat may argue that there was no fair consideration. It is unclear the extent of Terry's assets other than he had "substantial money and property assets," but \$100,000 for every year may well be insufficient consideration for executing the agreement. It is unclear how much marital property there will be every month, but assuming it is more, Pat may be successful on this ground.

Third, the agreement is not fair. The agreement was essentially signed on the courthouse steps—Pat did not have time to consider, to negotiate, or to get representation. Impliedly, if Pat does not sign, Terry will not marry her. Therefore, she is signing it under durress. She did not read the terms and the terms were not explained to her. The terms imply that she was to receive \$400,000 for four years of marriage, and it is unclear what marital rights she gave up in lieu thereof. But because she was bombarded on her wedding day, the terms are unlikely to be considered "fair" by

any court.

Lastly, Pat was not adequately represented. She did not have her own attorney with her, and though it does not tell us what Pat does, arguably she is a much less sophisticated business person then is Terry. Terry did not read the contract, and it was not explained to her. Therefore she was not properly informed of her rights. Arguably, she also did not "consent" to the contract, as she was unaware of the terms or what she was getting in consideration for her signature.

Therefore the agreement is unenforceable.

#3:

When granting maintenance, the court determines whether the <u>reasonable needs</u> of the support applying for maintenance can be satisfied elsewhere, such as in a just division of the property. If those reasonable needs cannot be met, the court will look at the following:

- -the years of marriage
- -the relative earning capacity of each party
- -property/assets acquired from marital property
- -the employability of each spouse
- -the paying spouses' ability to pay
- -the standard of living during the marriage
- -the time for the spouse to receive education or training
- -the physical or mental capabilities of each spouse
- -conduct during marriage
- -any other relative factor

Here, the marriage lasted for a relatively short time -- only four years. We do not know why Pat is filing for divorce. Howevever, as Pat did not have significant monetary or property assets, she will be unable to live near the standard of living she was arguably accostomed to on \$400,000. Terry definitely has the ability to pay and has a high earning capacity in comparison to Pat. The

court could order an award of maintenance for a limited time, as well, allowing Pat to receive education/training to strengthen her earning capability. The determination is solely based on need, however, and the \$400,000 will be heavily considered in whether she will need more to sustain her standard of living during the marriage of four years.